HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.300/2006

Appellants (Plaintiff's daughters)

1. Kamla Bai, aged about 21 years, W/o Suraj Kumar, R/o at present Village Deori, Present R/o Saraipali, District Mahasamund (C.G.)

2. Ku. Modanika, Aged about 7 years, Through: her Guardian/Vadmitra-Father Reshamlal S/o Setram, Aged about 49 years, R/o Village Deori, Post Gadhfuljhar, District Mahasamund (C.G.)

Versus

Respondents Defendants

1. Janu Bai, Aged about 50 years, D/o Parasram, R/o Kendudhar, P.S. & Tehsil Saraipali, District Mahasamund (C.G.)

2. State of Chhattisgarh, Through: Collector, Mahasamund, District Mahasamund (C.G.)

Second Appeal under Section 100 of the Code of Civil Procedure, 1908

Present:-
Shri V. A. Goverdhan, counsel for the appellants.
Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.2.

ORAL ORDER
(Passed on 14th November, 2007)

Heard on admission.

(2) The appellants are aggrieved by the judgment and decree dated 28-04-2006 passed by the First Additional District Judge, Mahasamund in Civil Appeal No.5-A/2003, whereby the judgment and decree dated 19-12-2002 passed by the Civil Judge Class-I, Saraipali in Civil Suit No. 184-A/2002, whereby the suit was dismissed, was affirmed.

(3) The sole ground urged by learned counsel for the appellants in this appeal is that the Courts below have erred in holding that the execution of Will by Parasram on 26-12-1994 in favour of Nirobai was not proved in accordance with law. Learned counsel for the appellants did not deny the well settled position in law that for proving execution of Will, it is necessary to prove that the attesting witness had signed the Will after he saw the executor sign the Will in his presence.

(4) Having considered the submission made by learned counsel for the appellants, I have perused the record as also the judgment and decree passed by both the Courts below.

(5) Brief facts are that Nirobai has instituted Civil Suit No.184-A/2002 against her sister Janubai on the ground that her father Parasram had bequeathed the suit land in her favour by executing a Will on 26-12-1994. Janubai contested the suit on the ground that the Will was a forged document. The present appellants are the legal representatives of Nirobai. Both the Courts below have held that execution of the Will by Parasram on 26-12-1994 in favour of Nirobai was not proved in accordance with law.

(6) It is not in dispute that Ganesh Ram, an attesting witness of the Will, alleged to have been executed by Parasram, could not be examined since dead. The remaining attesting witness Mukteshwar Baba, PW-4 admitted in his cross-examination that he had signed the Will in his cottage and not in presence of Parasram. In this view of the matter, there is nothing to show that the attesting witness had seen Parasram signing the Will and had thereafter signed as an attesting witness. Rohi Das and Gopeshwar, witnesses for the respondent/defendant No.1 have testified that two years prior to his death, Parasram was suffering from paralysis and could not sign. Even Mayaram, PW-3 deposed that Parasram was ill and bedridden prior to his death. He has also admitted that the document, Ex.P-1 was prepared and got typed from Saraipali by Reshamlal, who is the husband of Nirobai.

(7) In this view of the matter, I am of the considered opinion that both the Courts below have, on proper appreciation of evidence, oral as well as

documentary, recorded a finding that execution of the Will by Parasram was not proved in accordance with law and have rightly declined to grant relief to the appellants/plaintiffs.

(8) In this view of the matter, no substantial question of law arises for determination in this appeal, which is accordingly dismissed at the stage of admission.

(9) Consequently, M.(C.)P.No.1063/2006, which is an application under Order 39 Rules 1 & 2 read with Section 151 of the C.P.C., also stands disposed of.

Sd-/
Dilip Raosaheb Deshmukh
Judge